

qualifying or being treated as a DISC for any taxable year for which such election was in effect.

(2) *Effect on shareholders.* A valid election by a corporation to be treated as a DISC subjects the shareholders of such corporation to the provisions of section 995 (relating to the taxation of the shareholders of a DISC or former DISC) and to all other provisions of the code relating to the shareholders of a DISC or former DISC. Such provisions of the code apply to any person who is a shareholder of a DISC or former DISC whether or not such person was a shareholder at the time the corporation elected to become a DISC.

(e) *Termination of election*—(1) *In general.* An election to be treated as a DISC is terminated only as provided in subparagraph (2) or (3) of this paragraph.

(2) *Revocation of election*—(i) *Manner of revocation.* An election by a corporation to be treated as a DISC may be revoked by the corporation for any taxable year of the corporation after the first taxable year for which the election is effective. Such revocation shall be made by the corporation filing a statement that the corporation revokes its election under section 992(b) to be treated as a DISC. Such statement shall indicate the corporation's name, address, employer identification number, and the first taxable year of the corporation for which the revocation is to be effective. The statement shall be signed by any person authorized to sign a corporation return under section 6062. Such revocation shall be filed with the service center with which the corporation filed its election, except that, if it filed an annual information return under section 6011(e)(2), the revocation shall be filed with the service center with which it filed its last such return.

(ii) *Years for which revocation is effective.* If a corporation files a statement revoking its election to be treated as a DISC during the first 90 days of a taxable year (other than the first taxable year for which such election is effective), such revocation will be effective for such taxable year and all taxable years thereafter. If the corporation files a statement revoking its election to be treated as a DISC after the first

90 days of a taxable year, the revocation will be effective for all taxable years following such taxable year.

(3) *Continued failure to be a DISC.* If a corporation which has elected to be treated as a DISC does not qualify as a DISC (and is not treated as a DISC pursuant to section 992(a)(2)) for each of any 5 consecutive taxable years, such election terminates and will not be effective for any taxable year after such 5th taxable year. Such termination will be effective automatically, without notice to such corporation or to the Internal Revenue Service. If, during any 5-year period for which an election is effective, the corporation should qualify as a DISC (or be treated as a DISC pursuant to section 992(a)(2)) for a taxable year, a new 5-year period shall automatically start at the beginning of the following taxable year.

(4) *Election after termination.* If a corporation has made a valid election to be treated as a DISC and such election terminates in either manner described in subparagraph (2) or (3) of this paragraph, such corporation is eligible to reelect to be treated as a DISC at any time by following the procedures described in paragraphs (a) through (c) of this section. If a corporation terminates its election and subsequently reelects to be treated as a DISC, the corporation and its shareholders continue to be subject to sections 995 and 996 with respect to the period during which its first election was in effect. Thus, for example, distributions upon disqualification includible in the gross incomes of shareholders of a corporation pursuant to section 995(b)(2) continue to be so includible for taxable years for which a second election of such corporation is in effect without regard to the second election.

[T.D. 7237, 37 FR 28626, Dec. 28, 1972]

#### § 12.8 Elections with respect to net leases of real property.

(a) *In general.* The elections described in this section are available for determining whether real property held by the taxpayer is subject to a net lease for purposes of section 57 (relating to items of tax preference for purposes of the minimum tax for tax preferences) or 163(d) (relating to limitation on interest on investment indebtedness).

Under sections 57(c)(1)(A) and 163(d)(4)(A)(i), property will be considered to be subject to a net lease for a taxable year where the sum of the deductions of the lessor with respect to the property for the taxable year allowable solely by reason of section 162 (other than rents and reimbursed amounts with respect to the property) is less than 15 percent of the gross income from rents produced by the property (hereinafter referred to as the "expense test"). Under sections 57(c)(2) and 163(d)(7)(A), where a parcel of real property of the taxpayer is leased under two or more leases, the taxpayer may elect to apply the expense test set forth in sections 57(c)(1)(A) and 163(d)(4)(A)(i) by treating all leased portions of such property as subject to a single lease. Under sections 57(c)(3) and 163(d)(7)(B), at the election of the taxpayer, the expense test set forth in sections 57(c)(1)(A) and 163(d)(4)(A)(i) shall not apply with respect to real property of the taxpayer which has been in use for more than 5 years.

(b) *Election with respect to multiple leases of single parcel of real property.* If a parcel of real property of the taxpayer is leased under two or more leases, the expense test referred to in paragraph (a) of this section shall, at the election of the taxpayer, be applied by treating all leased portions of such property as subject to a single lease. For purposes of this paragraph, the term "parcel of real property" includes adjacent properties each of which is subject to lease.

(c) *Election with respect to real property in use for more than 5 years.* At the election of the taxpayer, the expense test referred to in paragraph (a) of this section shall not apply with respect to real property of the taxpayer which has been in use for more than 5 years. For this purpose, real property is in use only during the period that such property is both owned and used for commercial purposes by the taxpayer. If an improvement to the property was made during the time such property was owned by the taxpayer, and if, as a result of such improvement, the adjusted basis of such property was increased by 50 percent or more, use of such property for commercial purposes shall be deemed to have commenced for pur-

poses of this paragraph as of the date such improvement was completed. An election under this paragraph shall apply to all real property of the taxpayer which has been in use for more than 5 years.

(d) *Procedure for making election—(1) Time and scope of election.* An election under paragraph (b) or (c) of this section shall be made for each taxable year to which such election is to apply. The election must be made before the later of (i) the time prescribed by law for filing the taxpayer's return for the taxable year for which the election is made (determined with regard to any extension of time) or (ii) August 31, 1973, but the election may not be made after the expiration of the time prescribed by law for the filing of a claim for credit or refund of tax with respect to the taxable year for which the election is to apply.

(2) *Manner of making election.* Except as provided in the following sentence, an election by the taxpayer with respect to a taxable year shall be made by a statement containing the information described in paragraph (d)(3) of this section which is—

- (i) Attached to the taxpayer's return or amended return for such taxable year,
- (ii) Attached to a timely filed claim by the taxpayer for credit or refund of tax for such taxable year, or
- (iii) Filed by the taxpayer with the director of the Internal Revenue Service Center where the return for such taxable year was filed.

In the case of a taxable year ending before July 1, 1973, no formal statement of election is necessary if the taxpayer's return took into account an election under paragraph (b) or (c) of this section; the taxpayer will be considered to have made an election in accordance with the manner in which leases with respect to parcels of real property described in paragraph (b) of this section, or leases of property which has been in use for more than 5 years as described in paragraph (c) of this section, are treated in the return.

(3) *Statement.* The statement described in paragraph (d)(2) of this section shall contain the following information:

(i) The name, address, and taxpayer identification number of the taxpayer;

(ii) The taxable year to which the election is to apply if the statement is not attached to the return or a claim for credit or refund;

(iii) A description of any leases which are to be treated as a single lease; and

(iv) A description of any real property in use for more than 5 years to which the expense test is not to apply.

(4) *Revocation of election.* An election made pursuant to this paragraph may be revoked within the time prescribed in paragraph (d)(1) of this section for making an election and may not be revoked thereafter. Any such revocation shall be made in the manner prescribed by paragraph (d)(2) of this section for the making of an election.

(e) *Election by members of partnership.* Under section 703(b) (as amended by section 304(c) of the Revenue Act of 1971), any election under section 57(c) or 163(d)(7) with respect to property held by a partnership shall be made by each partner separately, rather than by the partnership. If an election made by a taxpayer under paragraph (b) of this section applies in whole or in part to property held by a partnership, the taxpayer shall, in applying the expense test referred to in paragraph (a) of this section, take into account his distributive share of the deductions of the partnership with respect to the property for the taxable year allowable solely by reason of section 162 (other than rents and reimbursed amounts with respect to the property) and also his distributive share of the partnership's rental income from such property for the taxable year.

[T.D. 7271, 38 FR 9296, Apr. 13, 1973]

**§ 12.9 Election to postpone determination with respect to the presumption described in section 183(d).**

(a) *In general.* An individual, electing small business corporation, trust or estate may elect in accordance with the rules set forth in this section to postpone a determination whether the presumption described in section 183(d) applies with respect to any activity in which the taxpayer engages until after the close of the fourth taxable year (sixth taxable year, in the case of an activity described in § 1.183-1(c)(3)) fol-

lowing the taxable year in which the taxpayer first engages in such activity. The election must be made in accordance with the applicable requirements of paragraphs (b), (c) and (d) of this section. Except as otherwise provided in paragraphs (c) and (e) of this section, an election made pursuant to this section shall be binding for the first taxable year in which the taxpayer first engages in the activity and for all subsequent taxable years in the five (or seven) year period referred to in the first sentence of this paragraph. For purposes of this section, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(b) *Period to which an election applies.* An individual, trust, estate, or small business corporation may make the election. The five year presumption period (seven year presumption period in the case of an activity described in § 1.183-1(c)(3)) to which the election shall apply shall be the five (or seven) consecutive taxable years of such taxpayer beginning with the taxable year in which such taxpayer first engages in the activity. For purposes of this section, a taxpayer who engages in an activity as a partner, engages in it in each of his taxable years with or within which ends a partnership year during which the activity was carried on by the partnership.

(c) *Time for making an election.* A taxpayer who is an individual, trust, estate or small business corporation may make the election provided in § 183(e) by filing the statement and consents required by paragraph (d) of this section within—

(1) 3 years after the due date of such taxpayer's return (determined without extensions) for the taxable year in which such taxpayer first engages in the activity, but not later than

(2) 60 days after such taxpayer receives a written notice (if any) from a district director that the district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183.

The provisions of paragraph (c)(2) of this section shall in no event be construed to extend the period described in (c)(1) of this section for making such